

EXHIBIT 1

1
2 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

3 Case No. 17-BK-3283-LTS

-----x

4 In re:

5 THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

6 as representative of

7 THE COMMONWEALTH OF PUERTO RICO, et al.,

8 Debtors.

9 -----x

Case No. 17-BK-4780-LTS

10 -----x

In re:

11 THE FINANCIAL OVERSIGHT AND MANAGEMENT
12 BOARD FOR PUERTO RICO,

13 as representative of

14 THE PUERTO RICO ELECTRIC POWER AUTHORITY,
15 Debtor.

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16 May 3, 2023

10:00 a.m.

17
18 VIDEOTAPED DEPOSITION of DAVID SKEEL,
19 held at the offices of Kramer Levin
20 Naftalis & Frankel LLP, located at 1177
21 Avenue of the Americas, New York, New York
22 10036, before Anthony Giarro, a Registered
23 Professional Reporter, a Certified Realtime
24 Reporter and a Notary Public of the State
25 of New York.

1 DAVID SKEEL

2 recovery that it'll be receiving? Do you
3 recall?

4 A They will be receiving --
5 for their bond, they will be receiving
6 bonds. And they are, in particular, A
7 Bonds. They're called A Bonds.

8 Q Series A Bonds?

9 A Series A Bonds.

10 Q And in addition to the
11 Series A Bonds, is there any other
12 compensation that the fuel line lenders
13 will be getting?

14 A Fuel line lenders will be
15 getting interest during the period
16 between the settlement and confirmation
17 of the plan. There is a possibility that
18 they will get additional recovery,
19 depending on what happens with the
20 ongoing litigation. They also separately
21 are entitled to payment of fees, payment
22 of \$15 million for what are called
23 consummation fees and \$11 million for
24 what are referred to as professional or
25 reimbursement fees.

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2 expected to pay out in 35 years.

3 Q Now, were the Series A Bonds
4 offered to any other PREPA bondholders?

5 A To my knowledge, the Series
6 A Bonds were not offered to other
7 bondholders.

8 Q Why not?

9 MR. FIRESTEIN: Objection.

10 That calls for both deliberative
11 process, as well as privileged
12 communications between client and
13 counsel. I instruct the witness not
14 to answer.

15 Q Under the current PREPA plan
16 of adjustment, are there any other
17 bondholders or others that are receiving
18 Series A Bonds, other than the fuel line
19 lenders?

20 A I believe only the fuel line
21 lenders receive or will receive Series A
22 Bonds.

23 Q Now, you mentioned
24 professional reimbursement fees as one of
25 the items that the fuel line lenders may

1 DAVID SKEEL

2 we thought they were fairly strong
3 arguments.

4 Q When you say that you took
5 litigation positions against those
6 arguments, what in particular suggested
7 to the board that they would no longer
8 take those positions and settle with the
9 PSA?

10 MR. FIRESTEIN: It's the
11 same objection with respect to that
12 question. You could ask him what he
13 thinks about that, but not the board
14 as a whole.

15 Q Again, do you have a view as
16 to why the position with respect to
17 current expense that you opposed would
18 suddenly be not opposed?

19 MR. FIRESTEIN: Object to
20 the form of the question. You can
21 answer if you understand.

22 A My basis for believing that
23 the settlement is a good settlement or an
24 important basis was a view that their
25 arguments are fairly strong and that

1 DAVID SKEEL

2 given the strength of their arguments and
3 the other benefits of the settlement, the
4 settlement was in the best interest of
5 PREPA and was a fully reasonable,
6 desirable settlement.

7 MR. NATBONY: Let's pull up
8 on the screen, tab 23, please. And
9 this will be marked as Exhibit 19, I
10 believe.

11 (The above-referred-to
12 document was marked as Exhibit 19 for
13 identification, as of this date.)

14 MR. FIRESTEIN: Do we get
15 hard copies of that one?

16 MR. NATBONY: Sure.

17 MR. FIRESTEIN: Thank you so
18 much.

19 A Could I read the press
20 release?

21 Q Sure. Yes.

22 MR. KIRPALANI: Is there a
23 reason there's nothing showing on the
24 screen in the room?

25 MR. FIRESTEIN: There is

1 DAVID SKEEL

2 A I do stand by that
3 statement.

4 Q How do you go about, Mr.
5 Skeel, deciding how to balance the need
6 to treat creditors fairly while also
7 reducing the debt to an amount that PREPA
8 can afford to pay?

9 MR. FIRESTEIN: An
10 admonition. Without getting into how
11 the deliberations take place, you can
12 answer his question by reference to
13 your general practice and how you
14 went about it.

15 THE WITNESS: Thank you.

16 A I think that the American
17 bankruptcy laws do a wonderful job of
18 guiding precisely that, that set of
19 trade-offs.

20 Q Thank you, Mr. Skeel.

21 But I'm asking you how you
22 as the chairman of the oversight board go
23 about attempting to treat Puerto Rico's
24 creditors fairly while also reducing the
25 debt to an amount that PREPA can afford.

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2 says, "The mediation process assisted the
3 oversight board in reaching deals with
4 two major creditor groups, the fuel line
5 lenders holding over \$700 million in
6 unsecured claims and National Public
7 Finance Guarantee Corporation, a monoline
8 insurer of PREPA's revenue bonds and
9 holder of certain claims against PREPA."

10 And then it goes on.

11 Do you see that sentence?

12 A I do see that sentence.

13 Q Is it your testimony that
14 the mediation was involved in brokering
15 the settlement with National?

16 MR. FIRESTEIN: I'm going to
17 object and instruct on the grounds
18 that that invades first mediation
19 process and the communications that
20 would have occurred --

21 MR. KIRPALANI: No, sir.
22 You cannot use a reference to the
23 mediation process as a sword to
24 defend the good-faith of an unfairly
25 discriminatory settlement and then

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2 prevent me from asking about that.

3 MR. FIRESTEIN: Who says
4 that that's what the intention is
5 going to be? A mediation process
6 includes not only involvement of the
7 mediators, but also other
8 directors --

9 MR. KIRPALANI: Now you're
10 testifying.

11 MR. FIRESTEIN: If you're
12 going to make a statement, then I'm
13 going to tell you what I think. If
14 you're going to tell me what I can't
15 do, I'm going to tell you why I can.

16 MR. KIRPALANI: I'm going to
17 tell you. We're going to bring Mr.
18 Skeel back to answer this question if
19 you instruct him.

20 MR. FIRESTEIN: You could do
21 what you wish relative to that.

22 MR. KIRPALANI: That's fine.

23 So just to be clear, you're
24 instructing the witness not to answer
25 a question about whether the

1 DAVID SKEEL

2 mediation team was involved in the
3 settlement with National?

4 MR. FIRESTEIN: That's not
5 what the sentence says.

6 MR. KIRPALANI: I'm asking
7 you a question.

8 MR. FIRESTEIN: Yes. The
9 answer is yes.

10 Q Who at the oversight board
11 negotiated the settlement with National?

12 A The primary negotiation was
13 done by our lawyers and financial
14 advisors.

15 Q Were you involved yourself
16 in negotiating that settlement?

17 A I was not involved in
18 directly negotiating, no.

19 Q Under the plan of the
20 oversight board, non-settling
21 bondholders, even if they prevailed in
22 the adversary proceeding, they would do
23 worse than National under every scenario
24 contemplated by this plan; isn't that
25 correct?

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2 Q Absolutely.

3 A Okay.

4 Q Do you see that this offers
5 to pay Syncora 50 percent of the value of
6 their claim?

7 A I do see that.

8 Q Why wasn't Syncora Guarantee
9 offered the same treatment that National
10 is being offered on February 14th?

11 MR. FIRESTEIN: Objection to
12 the extent that that gets to the
13 deliberative process and privileged
14 communications that would have
15 occurred between Mr. Skeel or other
16 representatives of the board.

17 MR. KIRPALANI: I'll
18 withdraw the question to stop this.

19 Q Why were other bondholders,
20 including Syncora Guarantee, only offered
21 50 cents when National was offered 70
22 cents?

23 MR. FIRESTEIN: Same
24 objection and same instruction. Let
25 me say it this way. To the extent

1 DAVID SKEEL

2 that your answer is based on
3 communications that you've had with
4 counsel, I want you to not respond to
5 that question, or just identify it so
6 I can instruct if it's based on some
7 other basis.

8 A Everything I know is through
9 communications with counsel.

10 MR. FIRESTEIN: On that
11 basis, I'll instruct.

12 MR. KIRPALANI: But not
13 everything you know is a request for
14 legal advice, is it? Everything you
15 know from counsel could be facts from
16 other people.

17 MR. FIRESTEIN: It's on this
18 issue, is what he's saying.

19 Q To your knowledge, though,
20 Syncora Guarantee -- the document says
21 what it says. Nevermind.

22 You're in the process of
23 writing a book, Mr. Skeel -- right? --
24 about Puerto Rico?

25 A I am, yes.

1 DAVID SKEEL

2 A I generally understand what
3 it provides.

4 Q And what is your
5 understanding?

6 A I'm tempted to ask you to
7 put the provision in front of me. But it
8 is the --

9 MR. FIRESTEIN: Well, if you
10 want it, he'll give it to you.

11 A If you do this one. (b)1 is
12 the beginning of the provision that deals
13 with non-consensual confirmation of a
14 reorganization plan. And (b)1 has the
15 requirements or the strictures that with
16 respect to a non-consenting class, the
17 plan is required to not discriminate
18 unfairly and to be fair and equitable,
19 and it choosers a little more language as
20 well.

21 Q Do you have an
22 understanding, Mr. Skeel, what it means
23 for a plan to not discriminate unfairly
24 within Section 1129(b)1?

25 A I have an understanding of

1 DAVID SKEEL

2 the unfair discrimination requirement,
3 yes.

4 Q What generally does that
5 mean?

6 A Generally, what unfair
7 discrimination requirement means is that
8 similarly situated classes of creditors
9 cannot be treated dramatically
10 differently, unless there is a good
11 reason for different treatment.

12 Q You said dramatically
13 differently.

14 They can be treated
15 differently; is that your understanding?

16 MR. FIRESTEIN: No. He said
17 what he said.

18 A I would say significantly or
19 dramatically differently.

20 Q You also say -- sorry.

21 The document says that you
22 also may provide testimony about facts
23 showing that, among other things, the
24 fuel line lender PSA and the National PSA
25 are reasonable. Do you see that?

1 DAVID SKEEL

2 A Yes, I do.

3 Q And this goes back to
4 testimony you provided earlier. I'll ask
5 you more questions about it.

6 But is it your intent, Mr.
7 Skeel, to testify that in your view, the
8 fuel line lender settlement is
9 reasonable?

10 A Yes. I believe the fuel
11 line lender settlement is reasonable.
12 And I am testifying that it is.

13 Q And how about the National
14 settlement?

15 A I also believe that the
16 National settlement is reasonable.

17 MR. LAROSE: Could you put
18 back on the screen -- and I don't
19 know if you have, Mr. Skeel -- the
20 documents that were introduced
21 earlier today?

22 A They're all here.

23 Q I was going to direct your
24 attention just very briefly back to
25 Exhibits 3 and 4.

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2 creditors. So, yes, it would include the
3 UCC and the creditors that the UCC
4 represents.

5 Q What, if any, steps is the
6 board taking to try to reach a resolution
7 with the UCC?

8 MR. FIRESTEIN: I'm going to
9 object to that question and instruct
10 him. The progress or discussions or
11 efforts towards settlement are not
12 admissible or appropriate, whether in
13 the mediation context or otherwise
14 under Rule 408. I'll instruct him
15 not to answer the question.

16 MR. BASSETT: I disagree
17 with that entirely, plus he testified
18 to it earlier today without
19 objection.

20 MR. FIRESTEIN: Then reframe
21 your question.

22 Q You testified just now and
23 earlier today that the board is making
24 efforts to develop consensus in support
25 of the plan.

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2 ask you a few more specific questions.

3 As you testified, there's
4 several different components to it in
5 terms of the new Series A Bonds being
6 issued. That was new Series A Bonds in a
7 face amount of 84 percent of the fuel
8 line lenders allowed claim; is that
9 correct?

10 A That is correct.

11 Q Mr. Skeel, do you believe
12 that that's reasonable?

13 A I do believe that that's
14 reasonable.

15 Q That 84 percent exchange
16 rate, why is that reasonable to you in
17 your view?

18 A In my view, the terms of the
19 settlement are reasonable because the
20 fuel line lenders had plausible claims
21 that they were entitled to current
22 expense treatment and entitled to payment
23 in full. And by settling it, we were
24 able to resolve those claims at a lower
25 level than if they had successfully

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2 litigated those claims. And we also got
3 the benefit of substantial creditor
4 supporting the plan of adjustment.

5 Q So you said you were able to
6 resolve those claims at a level lower
7 than that which they would have received
8 had they successfully litigated the
9 claims; correct?

10 A That is correct.

11 Q What do you understand the
12 fuel line lenders would have received in
13 terms of a percentage recovery on their
14 claims had they won that litigation?

15 A They would have been paid in
16 full.

17 Q Now, on the flip side, the
18 board obviously in that litigation, you
19 saw some of the briefing materials that
20 the board put together earlier, but the
21 litigation position the board had taken
22 was that the fuel line lenders were
23 incorrect in their arguments and should
24 not prevail in that litigation; right?

25 A That is correct. We took

1 DAVID SKEEL

2 the litigation position that they were
3 not entitled to be paid in full.

4 Q So what is your
5 understanding, if any, of what the fuel
6 line lenders' recovery on account of
7 their claims would be, had they lost that
8 litigation?

9 MR. FIRESTEIN: Objection,
10 calls for speculation, if you know.

11 A Well, I would have to
12 speculate about the context of that
13 recovery. If it were under the plan of
14 adjustment that's currently on the table,
15 they would get the same recovery as
16 unsecured creditors get if they lost.

17 Q So then in your view, the
18 84 percent recovery is a reasonable
19 landing point as between that downside
20 scenario and the 100 percent upside
21 scenario?

22 A Yes. It is, in my view, a
23 reasonable landing point.

24 Q You testified earlier, I
25 think, that the Series A Bonds have a

1 DAVID SKEEL

2 A That is correct.

3 Q And do you believe that is
4 reasonable?

5 A I believe that is
6 reasonable.

7 Q Why is it reasonable to
8 provide the fuel line lenders with
9 interest on the bonds as of December 1st,
10 2022, given that those bonds have not
11 been issued yet?

12 A That was an important part
13 of the deal for them, making the deal
14 work. It's a small part, but a
15 non-trivial part of the deal. And it
16 compensates them for what, in effect, are
17 their carrying costs. They're locked up
18 in a sense from the time that they signed
19 this agreement. And they don't know how
20 long it's going to take before a plan is
21 confirmed. And it's giving them a
22 limited compensation for that.

23 Q The fuel line lenders are
24 not secured, are they?

25 A They will effectively be

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2 considerations, are you aware of any
3 reason why a fuel line lender's claim
4 would have a greater legal entitlement to
5 payment from PREPA as compared to another
6 general unsecured claim that is also a
7 current expense claim?

8 MR. FIRESTEIN: I'm going to
9 instruct him not to answer that
10 question. You're expressly asking
11 for a legal conclusion. It's clearly
12 invading attorney-client privilege
13 because you excluded his answer that
14 he gave you before. So I don't know
15 how it could be anything but.

16 MR. BASSETT: I don't know
17 how he's able to sit here and testify
18 to the reasonableness of a settlement
19 if he's not able to explain the basis
20 for how he gets that.

21 MR. FIRESTEIN: You could
22 argue that sometime if you'd like.
23 But he's already articulated for you
24 what his reasonable basis is.

25 Q You're not going to answer

1 DAVID SKEEL

2 reasons that the board entered into a
3 settlement. I want to make sure that
4 you're doing that knowingly because
5 we're going to take that position.

6 MR. FIRESTEIN: Okay. I
7 reject that characterization. The
8 question that was posed of him was
9 what are the legal reasons for why it
10 is that you would do something. That
11 question in its form has -- is
12 absolutely directed at
13 attorney-client communication because
14 he has testified at some length today
15 about the reasons why he thinks the
16 settlements are fair or not fair or
17 reasonable or not reasonable.

18 MR. KIRPALANI: We will see
19 if that's sufficient.

20 MR. FIRESTEIN: I agree with
21 that.

22 MR. BASSETT: I join in the
23 objection. He testified earlier that
24 he understands that in determining
25 whether or not a plan is fair and

1 DAVID SKEEL

2 reasonable, a creditor's legal
3 entitlements have to be considered.
4 He also testifies that he believes
5 the settlements are reasonable. If
6 he's not able to provide the basis
7 for how he gets there using those
8 underlying principals, how can he
9 offer that testimony?

10 MR. FIRESTEIN: That's not
11 true. He can offer facts. And
12 lawyers are empowered to use those
13 facts and apply the law to them. And
14 that's what lawyers do. And that's
15 what you'll hear at confirmation. A
16 witness is not obligated to give you
17 facts and his legal opinion on
18 things.

19 Q Mr. Skeel, what facts are
20 you aware of that entitle the fuel line
21 lenders to a greater recovery than
22 general unsecured creditors? What facts
23 are you aware of?

24 A Facts that I'm aware of are
25 that the fuel line lenders had a

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2 particularly strong claim to current
3 expense treatment because they're named
4 in the -- explicitly in the trust
5 agreements. And they have contracts with
6 PREPA that describe them as entitled to
7 current expense treatment.

8 Q Let's look at the trust
9 agreement. That was introduced earlier,
10 Exhibit 22.

11 You said they are named in
12 the trust agreement. I'm going to direct
13 your attention to the definition of
14 current expenses which I believe -- it's
15 on page 20 of the document at the bottom.
16 I don't know if that's different from the
17 PDF. Let me know when you're there.

18 A I am there.

19 Q Now, can you show me -- if
20 you go to the second page of that lengthy
21 definition, there are a series of
22 sentences that begin with the language,
23 "Notwithstanding the foregoing or
24 anything herein to the contrary."

25 Do you see where I am on the

1 DAVID SKEEL

2 THE VIDEOGRAPHER: The time
3 is 5:27 p.m. We're going off the
4 record.

5 (A short recess was taken.)

6 THE VIDEOGRAPHER: The time
7 is 5:42 p.m. And we're back on the
8 record.

9 Q Before we broke, we were
10 talking about the National settlement.

11 As you testified earlier
12 today, National is receiving on account
13 of its claim Series B bonds equal to
14 71.6 percent of its claim; is that right?

15 A That's right.
16 71.65 percent.

17 Q And is that 71.65 percent
18 exchange rate reasonable in your view?

19 A In my view, it's reasonable,
20 yes.

21 Q And why do you believe it's
22 reasonable?

23 A I believe it's reasonable
24 because when we entered the settlement,
25 National had an argument that they were

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2 completely secured. And they were
3 entitled to 100 cents on the dollar, plus
4 post-petition interest for the duration
5 of the case. And in return for the
6 settlement, they compromised that
7 argument and agreed to take the
8 71.65 percent.

9 And the other components of
10 the deal, they agreed to support the plan
11 to vote in favor of the plan. And by
12 reaching the deal with them, we took
13 roughly a billion dollars off the table.
14 So it was a very attractive settlement.

15 Q The settlement with National
16 was reached the end of January,
17 approximately, of this year; is that
18 right?

19 A I don't remember exactly
20 when it was. But it was sometime around
21 then.

22 Q And then sometime after
23 that, the court issued its summary
24 judgment decision in the lien challenge
25 litigation?

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2 A That is correct.

3 Q Have you -- strike that.

4 Do you believe that sitting
5 here today, in light of the decision
6 issued by the court, concerning the
7 narrow scope of National's lien that the
8 National settlement is still reasonable?

9 A I think it was a very
10 reasonable -- it is a reasonable
11 settlement. We settled it at a time when
12 we didn't know what the outcome of
13 that -- of that litigation is. And I
14 think it was a very sensible settlement.

15 Q And at the time you settled
16 it, that litigation was ongoing; right?

17 A It was ongoing, yes.

18 Q And when you entered into
19 the settlement, you knew that the
20 litigation would continue; right?

21 A We knew that -- we knew it
22 would continue. It had been argued. And
23 it would continue.

24 Q Does the National settlement
25 contain any kind of fiduciary out or

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2 it. And I don't believe that the court's
3 decision has changed that fact. It still
4 was reasonable when we made it.

5 Q Well, the court's decision
6 drastically changes the scope of the
7 bondholders' security interest, including
8 National, as compared to what they were
9 arguing in the litigation; right?

10 A It does, although there are
11 still some open variables. There's still
12 the possibility that it will be appealed.
13 And the extent of the bondholders' claim
14 is -- is not yet clear. There still are
15 open issues in the litigation.

16 Q And because of the open
17 issues that remain in litigation today,
18 it's your view that the National
19 settlement, as it is set forth in the
20 National PSA and in the plan, remains
21 reasonable?

22 A I believe it is a reasonable
23 settlement, yes.

24 Q In addition to the
25 71.65 percent exchange rate of the Series

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2 C bonds, the National settlement also
3 entitles National to a 3 percent fee
4 reimbursement, which I believe is
5 approximately 25.1 million, as stated in
6 the disclosure statement; is that your
7 understanding?

8 A My understanding is there is
9 a 3 percent consummation fee as part of
10 the agreement.

11 Q You said it's a 3 percent
12 consummation fee is how you would refer
13 to it?

14 A I believe that's right,
15 yeah. And there's a 2.86 percent
16 structuring fee.

17 Q And the 3 percent
18 consummation fee, that's reasonable in
19 your view?

20 A It is reasonable in my view.

21 Q What's the basis for that
22 statement?

23 A The basis for that statement
24 is it's -- these fees are consistent with
25 fees that the court has approved in other

1 DAVID SKEEL

2 Puerto Rico Title IIIs. And it is
3 consistent with fees generally that
4 are -- that are allowed in Chapter 11
5 cases as well in my view.

6 Q And do you view that fee as
7 compensating National for something?

8 A Which fee are we talking
9 about?

10 Q The consummation fee of
11 3 percent.

12 A The consummation fee
13 includes compensation for professionals'
14 fees as part of it, yes.

15 Q But are they receiving that
16 fee on account of some value that they
17 have provided -- that National has
18 provided to PREPA; is that your
19 understanding?

20 A It is -- it's primarily a
21 reimbursement-based fee. But they are --
22 they're receiving it because of their
23 contributions to the case and to the
24 benefits that they've provided us as part
25 of -- part of the settlement.

1 DAVID SKEEL

2 Q What are those contributions
3 and benefits?

4 A So this is shifting fees to
5 the structuring fee. The kinds of
6 contributions that are included in that
7 include their involvement in structuring
8 the bond indenture, the new bonds that --
9 new bond indenture that will be put in
10 place, the new bonds that will be part of
11 that. It also includes them committing
12 to support the plan, to vote in favor of
13 the plan and in my view, the public good
14 that they provide as a result of all
15 that.

16 Q So you switched to the
17 structuring fee?

18 A Yeah.

19 Q What value or benefits did
20 National provide in order to justify the
21 3 percent consummation fee that we were
22 talking about before?

23 A I think part of that is some
24 of the same benefits. But the focus of
25 the fee is primarily on reimbursing

1 DAVID SKEEL

2 attorneys' fees and professionals' fees.

3 Q National is also receiving
4 what's called an interim charge which is
5 I think a tenth of a cent per kilowatt
6 hour during the pendency of PREPA's case;
7 is that correct?

8 MR. FIRESTEIN: You could
9 restate your question.

10 Q Are you familiar with
11 something that has been referred to as an
12 interim charge that National is also
13 receiving out of the settlement?

14 A Yes. I'm familiar with the
15 interim charge.

16 Q And do you believe that's
17 reasonable?

18 A I believe that is
19 reasonable, yes.

20 Q What is the basis for that
21 interim charge?

22 A The interim charge, which I
23 believe is National's pro rata share of
24 1 percent, which would work out to I
25 believe roughly one-ninth of 1 percent,